

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADAM FRANCIS GARDNER,

Defendant.

CASE NO. 4: 18-cr-200-YGR
(and related 13-cr-446-YGR)

**ORDER DENYING MOTION FOR
 COMPASSIONATE RELEASE**

Re: Dkt. No. 33

Defendant Adam Francis Gardner is currently in the custody of the Bureau of Prisons (“BOP”) and incarcerated at the Federal Corrections Institute in Beaumont, Texas (“FCI Beaumont Medium”). Mr. Gardner moves for an order modifying his sentence pursuant to 18 U.S.C. section 3582(c)(1)(A). Mr. Gardner requests that the Court reduce his sentence to time served with the balance of the period of his original sentence imposed as a period of supervised release with home confinement and such other conditions as the Court deems just. The Government opposes the motion.

The Court has jurisdiction to grant the relief requested¹ and, having carefully considered the papers and evidence submitted in support of and in opposition to the motion and the reports provided by U.S. Probation, the Court **DENIES** the motion.

DISCUSSION

On September 13, 2018, Mr Gardner pled guilty to one count of a violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(viii) (Possession with Intent to Distribute Methamphetamine). On December 13, 2018, the Court sentenced Mr. Gardner to a term of imprisonment of 77 months on this violation, to run consecutive to a sentence of 12 months for a supervised release violation in 13-cr-446-YGR, in the custody of the Bureau of Prisons (“BOP”) and 4 years of supervised

¹ The Government concedes that the Court has jurisdiction given that 30 days have elapsed since Mr. Gardner submitted a request for compassionate release on June 28, 2020, which was denied by the warden at FCI Beaumont Medium on August 19, 2020.

release. (Dkt. No. 28; and Dkt. No. 110 in 13-cr-446-YGR.) He has served less than half of his sentence.

As amended by the First Step Act, 18 U.S.C. section 3582(c)(1)(A) provides:

[T]he court, upon motion of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment...after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that –

(i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A). As the Ninth Circuit recently held, “the Sentencing Commission has not yet issued a policy statement ‘applicable’ to 3582(c)(1)(A) motions filed by a defendant” and “the Sentencing Commission’s statements in U.S.S.G. § 1B1.13² may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.” *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).

With respect to whether an “extraordinary or compelling reason” justifies release, Mr. Gardner argues that he tested positive for COVID-19 in July 2020 and his age and existing medical condition of high blood pressure make him particularly vulnerable to reinfection with the virus, which the federal Centers for Disease Control have acknowledged can be expected.³ Mr.

² While not binding, the Court notes that Guideline 1B1.13 states: a court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or
(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;
(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
(3) the reduction is consistent with this policy statement.

U.S.S.G. § 1B1.13.

³ See Clinical Questions about COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html> (Updated Mar. 4, 2021).

Gardner contends that this risk, taken together with the conditions at FCI Beaumont warrant granting his motion. The Government opposes.

The Court's review of the evidence here does not support finding an "extraordinary or compelling reason" for Mr. Gardner's release. Mr. Gardner is 43 years old and was infected and recovered from COVID-19. Any lingering effects appear mild at best, based on the records submitted. Further, as he appears to acknowledge, he has acquired some amount of immunity from potential reinfection. While the Court takes seriously the risk of potential variants and of living in a congregate setting, these risks alone do not establish compelling reasons for a drastic reduction in his sentence.

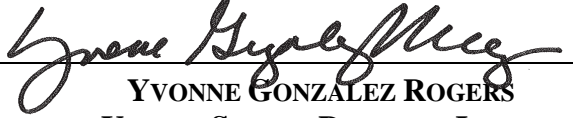
Further, the Court has reviewed its file in this matter thoroughly, including the Probation Office's presentencing report submitted at the time of sentencing. The Court must take into account whether the defendant is a danger to the safety of any other person or to the community, as provided in 18 U.S.C. section 3142(g), as well as the factors under 18 U.S.C. section 3553(a) regarding sentencing in ruling on this motion. Here, the Government and U.S. Probation recommended sentences in orders of magnitude greater than that imposed upon Mr. Gardner, based upon his offenses, his lengthy criminal history including violent crimes, and his career offender status. (*See* Dkt. Nos. 22 (Presentencing Investigation Report), 23 (U.S. Sentencing Memorandum).) His offense in the present case was committed during a term of supervised release for a conspiracy felon-in-possession conviction. The law and the specific facts of this case weigh against grant of this motion.

For the foregoing reasons, defendant's motion for compassionate release is **DENIED**.

This Order terminates Docket No. 33.

IT IS SO ORDERED.

Dated: May 3, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE